

CGC/B-9640

21 October 1959

Mr. Thomas J. Graves
Bureau of the Budget
Room 479
Executive Office Building
Washington, D. C.

SUBJECT: Proposed Revision of
Circular No. A-38

Dear Mr. Graves:

By way of follow-up to the meeting of October 8 conducted by the Bureau of the Budget and attended by representatives of interested agencies, this Agency submits herewith for consideration for inclusion in the anticipated revision of Circular No. A-38 a definition of "residence." We believe this language would substantially meet the requirements of this Agency with respect to the furnishing of W-2's to state and local taxing authorities and, as we understand the position of the other agencies as expressed at the meeting, the needs of those agencies as well.

Definition of Residence - The word "residence," as used in this Circular and the Appendix, means actual place of abode, i.e., the state and political subdivision in which the employee maintains the dwelling from which he commutes daily to his place of employment.

We agree with the opinions generally expressed at the meeting that it is both impracticable and an undue burden on Federal agencies to attempt to supply information to the States of domicile of employees. It is impracticable because of the extremely technical legal nature of the term as well as the difficulty in ascertaining the many facts necessary for a determination of domicile in cases where the employee himself may not be certain what his domicile is. In addition employees who are aware of the tax consequences of admitting domicile in particular states may be tempted to claim non-tax jurisdictions, thus at least partially thwarting the purpose of the Circular and the desire of the Federal Government to cooperate with the States in enforcing State tax laws. Finally, domicile being a very technical concept, a substantial number of employees will not understand what is meant by it even if the term "legal residence" is used instead.

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Questions were raised about those employees of Federal agencies who are stationed in foreign countries. In such cases information copies of Form W-2 will not go to a State or local tax jurisdiction since the employee's actual place of residence will be abroad. This seems unavoidable since the only logical alternative is to send the information to the State of the employee's domicile which would result in the difficulties mentioned in the previous paragraph.

Another problem discussed was that of the employee who lives in more than one jurisdiction in a single tax year. In such a case more than one State may be entitled to an income tax payment or at least the filing of a return. However, it seems infeasible for Federal agencies to attempt to give information to every jurisdiction in which an employee may live during a year. We agree with the opinions generally expressed by other agencies that the employee should be required to keep his address of actual residence on file with his agency and that the agency could use the address on file at the beginning of the last pay period of the year, or some other suitable time, as the place to which to send information copies of the W-2.

Since the intent of the Federal Government is to supply information to all jurisdictions requesting it, some offices of Federal agencies will find it necessary to have more than the actual address of the employee. We think that each agency can solve this problem in its own way by requesting such additional information as may be needed, e.g., where geographical residence does not coincide with the post office address or where tax information must be made available to local taxing jurisdictions such as cities and school districts.

While the procedures outlined here and discussed at the meeting may not completely satisfy the authorities of every tax jurisdiction, they probably will be as helpful as possible within the limits of efficient administration of Federal agencies. It seems almost certain that by receiving information on compensation paid to Federal employees having actual residence within the State or other tax jurisdiction such States and local jurisdictions will have more useful information to aid in the enforcement of their tax laws than they would if they should receive information only on individuals admitting domicile in those jurisdictions.

Sincerely yours,

Signed


Assistant General Counsel

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CONCUR:

Signed

(20 October 1959)

Office of the Comptroller

OGC:JDM:jcw (14 October 1959)

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